

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Right of Way Contract between Ivory Homes, LTD., and the City of West Jordan.

**SUMMARY:** Ivory Homes, LTD., owns a vacant parcel of real property located at approximately 8451 South 5600 West in West Jordan. The attached Right of Way Contract authorizes the City to purchase this property prior to the next phase of the 5600 West road widening project.

**FISCAL IMPACT:** \$245,732.00, all of which will be funded by the Council of Governments (COG) through the corridor preservation program, so the total cost to the City is zero dollars.

**STAFF RECOMMENDATION:**

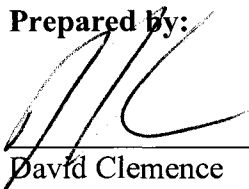
Staff recommends approval.

**MOTION RECOMMENDED:**

"I move to adopt Resolution No. 15-155, authorizing the Mayor to execute the attached Right of Way Contract between Ivory Homes, LTD., and the City of West Jordan, and authorizing the City's Real Estate Services Manager to sign all documents necessary to close the transaction at Metro National Title Company."

Roll Call vote required

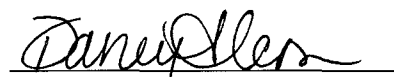
**Prepared by:**

  
David Clemence  
Real Estate Services Manager

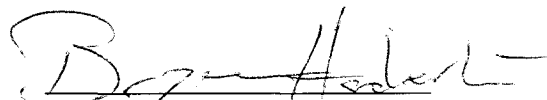
**Recommended by:**

  
Wendell Rigby  
Public Works Director

**Reviewed as to legal sufficiency:**

  
Darien Alcorn  
Interim City Attorney

**Recommended by:**

  
Bryce Haderlie  
Interim City Manager

**BACKGROUND DISCUSSION:**

The City of West Jordan was recently awarded funding from the Wasatch Front Regional Council (WFRC) for the purpose of preserving a right of way corridor along 5600 West Street. The right of way that needs to be purchased is located at the northeast corner of the intersection of 5600 West and 8600 South and is owned by Ivory Homes, LTD.

The attached Right of Way Contract is the end result of negotiations between City staff and the property owner, and it complies with City, WFRC and UDOT policies. All of the costs associated with this acquisition are covered by the funds awarded by the WFRC.

**Attachments:**

Resolution

Right of Way Contract

Area Reference Map

**THE CITY OF WEST JORDAN, UTAH**

A Municipal Corporation

**RESOLUTION NO. 15-155**

**A RESOLUTION AUTHORIZING THE CITY TO PURCHASE VACANT  
REAL PROPERTY FROM IVORY HOMES, LTD.**

Whereas, the City Council of the City of West Jordan has reviewed the attached Right of Way Contract between Ivory Homes, LTD., and the City of West Jordan; and

Whereas, the City Council desires that the aforementioned Contract be executed by the Mayor; and

Whereas, the Mayor is authorized to execute the attached Right of Way Contract pursuant to the Utah State Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is authorized and directed to execute the attached Right of Way Contract after it has been approved as to legal form by the City Attorney.

Section 2. The City's Real Estate Services Manager is authorized and directed to act on behalf of the City while closing the transaction at Metro National Title Company, with the right and authority to sign all documents necessary as part of said closing.

Section 3. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 12<sup>th</sup> day of August, 2015.

CITY OF WEST JORDAN

ATTEST:

By: \_\_\_\_\_  
KIM V. ROLFE, Mayor

\_\_\_\_\_  
MELANIE S. BRIGGS, MMC  
City Clerk/Recorder

Voting by the City Council	"AYE"	"NAY"
Council Member Jeff Haaga	_____	_____
Council Member Judy Hansen	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Sophie Rice	_____	_____
Council Member Ben Southworth	_____	_____
Mayor Kim V. Rolfe	_____	_____

**City of West Jordan**  
**Right of Way Contract**  
*Advanced Acquisition – Corridor Preservation Funds*

<b>Project No:</b> N/A	<b>Parcel No(s):</b> N/A
<b>Job/Proj /Auth No:</b> N/A	<b>Pin No.</b> N/A <b>Tax ID:</b> 20-36-353-029
<b>Project Location:</b> 8451 South 5600 West	
<b>County of Property:</b> Salt Lake	
<b>Property Address:</b> 8451 South 5600 West, West Jordan, Utah 84081	
<b>Owner / Grantor(s):</b> Ivory Homes, LTD.	
<b>Owner's Address:</b> 970 E Woodoak Lane, Murray, Utah 84117	
<b>Primary Phone:</b> N/A	<b>Owner's Home Phone:</b> N/A <b>Owner's Work Phone:</b> (801) 747-7000

This Right of Way Contract, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2015, is by and between IVORY HOMES, LTD., a Utah Limited Partnership (hereinafter referred to as "Grantor"), whose principal office address is 970 E Woodoak Lane, Murray, Utah 84117, and the CITY OF WEST JORDAN, UTAH, a municipal corporation and political subdivision of the State of Utah (hereinafter referred to as "City"), whose principal office address is 8000 South Redwood Road, West Jordan, Utah 84088.

**RECITALS/CONSIDERATIONS**

A. Grantor owns a vacant parcel of real property in Salt Lake County, State of Utah, at approximately 8451 South 5600 West, West Jordan, Utah, 84081, which can also be found under Salt Lake County Tax Parcel Number 20-36-353-029, which contains approximately 1.76 acres.

B. City determined that acquiring Grantor's property will eventually be necessary to widen 5600 West Street in accordance with its Master Planned Road system.

C. Grantor determined that City's acquisition of its property for 5600 West Street is consistent with Grantor's long term development plans.

D. Grantor's property is more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein (the "Property").

E. City's acquisition of the Property is subject to the terms and conditions of that certain Reimbursement/Pioneering Agreement dated July 16, 2002 (the "Reimbursement Agreement"), a copy of which is attached hereto as Exhibit "E" and by this reference incorporated herein.

F. In accordance with the Reimbursement Agreement, the City's purchase of the Property shall be based on the per-square-foot value established by that certain real estate appraisal performed by Bodell-Van Drimmelen Commercial Appraisers, Inc., dated February 25, 2002 (the "Appraisal"), a copy of which is attached hereto as Exhibit "F" and by this reference incorporated herein.

G. Grantor and City (each a "Party," and collectively the "Parties") have agreed to proceed with this Right of Way Contract ("Contract") pursuant to the terms and conditions set forth herein.

## **AGREEMENT**

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Contract and are made a part hereof.

2. Acquisition Amount: City agrees to pay Grantor the total sum of TWO HUNDRED FORTY FIVE THOUSAND FIVE HUNDRED FIFTY TWO and 00/100 DOLLARS (\$245,552.00), exclusive of closing, inspection and other related costs and fees, subject to the terms and conditions set forth herein, in exchange for Grantor conveying the Property to City (the "Acquisition Amount").

3. No Personal Property. The Parties acknowledge that no personal property is being acquired and that no personal property is located on the Property.

4. Risk of Loss for Damage to Improvements. Grantor shall be responsible for any risk of loss prior to closing, but no improvements exist on the Property.

5. Deed. Grantor shall cause title to the Property to be transferred to City by Special Warranty Deed in a form and format substantially similar to that which is attached hereto and incorporated herein as Exhibit "B". Grantor shall transfer title to City free and clear of all liens and encumbrances, subject only to the following: a) those matters deemed acceptable by City in Schedule B of that certain preliminary title commitment issued by Metro National Title Company under Order No. 44370A, dated January 8, 2015; and b) those matters identifiable by viewing the Property, including but not limited to unrecorded easements, rights-of-way and property lines.

6. Closing Costs and Prorations. The Acquisition Amount shall be due in full at closing, and the date of closing shall be used for proration of all property taxes due and owing on the Property, including greenbelt rollback taxes, if any, which will all be paid at Grantor's sole cost and expense. At Closing Grantor shall pay for and cause to be issued to City the most current version of an ALTA standard owner's policy of title insurance to cover the Property in the amount of the Acquisition Amount, and Grantor and City shall each pay one half of the fees charged by the escrow company to close this transaction. The escrow company is authorized and directed to withhold from Grantor's proceeds at Closing, sufficient funds to pay off all mortgages, trust deeds, judgments, mechanic's liens, tax liens, warrants and any other monetary encumbrances that may attach to the Property. City shall pay the recording fees associated with filing the Special Warranty Deed in the office of the Salt Lake County Recorder.

7. Funding Approval. City intends to pay the Acquisition Amount with funding approved by the Wasatch Front Regional Council (the "WFRC"), the Salt Lake County Council of Governments (the "COG"), and the Utah Department of Transportation (the "UDOT"); therefore, this transaction is subject to review and approval by the WFRC, the COG and the UDOT. If the WFRC, the COG or the UDOT does not approve this transaction, this Contract becomes null and void.

8. Other Documents. The UDOT requires this transaction to comply with state and federal property acquisition guidelines, therefore, Grantor and City shall voluntarily execute documents substantially similar to the "Offer to Purchase" and the "Voluntary Acquisition" forms attached hereto and incorporated herein as Exhibits "C" and "D", respectively. Grantor and City shall also voluntarily execute any other document necessary to close this transaction.

9. Possession and Closing Date. Grantor shall provide possession of the Property to City on the date of closing, free of all debris and any hazardous materials. Grantor shall leave the Property in the same condition as it existed when the Contract was signed; no work or alteration will be done to the Property other than what may be provided for in this Contract, provided, however, that Grantor agrees to maintain the Property until the date of Closing. Closing shall be on or before Thursday, July 30, 2015; provided, however, that the Parties may extend the date of closing to a mutually agreeable date, if necessary.

10. Inspection Rights. City has had full opportunity to inspect and investigate the Property to its satisfaction. City is fully satisfied with the condition of the Property and has agreed to accept the Property in its present condition, "as-is", subject to the provisions of this Contract. Grantor makes no representation or warranties as to the condition of the Property or its suitability for City's intended use, except representations specifically set forth herein.

11. Voluntary Conveyance. Grantor acknowledges that the Property is being conveyed to City voluntarily and that there is not a current threat of condemnation proceedings, and since this is a voluntary transaction Grantor waives any rights it might otherwise have to a "right of first refusal" on any surplus property not used for the future 5600 West Street construction project or other transportation projects.

12. Broker's Commission. No broker or finder has been used for this transaction; therefore, no commissions are due.

13. Entire Agreement. This Contract sets forth the entire understanding of the Parties with respect to the matters set forth herein as of the date hereof, it supersedes all prior oral or written agreements of the Parties as to the matters set forth herein, and it cannot be altered or amended except pursuant to an instrument in writing, signed by the Parties.

14. Binding Effect. This Contract shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, and any persons or entities claiming rights by, through or under them.

15. Advice of Counsel. The Parties confirm, represent and warrant that they (a) have carefully read this Contract, (b) understand the terms hereof, (c) have had the opportunity to seek the advice from legal counsel of their own choosing, (d) find it to be a fair and reasonable compromise of the disputed claims, defenses and issues, (e) are executing this Contract as a voluntary act, and (f) agree to be bound by and to faithfully execute the terms of the Contract. The Parties further confirm, represent and warrant that they are not under duress, and they acknowledge that to the extent they have waived any rights or defenses by entry into this Contract that such waiver was made voluntarily and with full knowledge of the ramifications of such waiver.

16. Attorney's Fees. If any Party shall seek to enforce or protect its rights under this Contract or under any document or instrument executed and delivered in connection herewith in any action, suit, mediation, arbitration case or other proceeding, the prevailing Party shall be entitled to receive from the other Party payment of its costs and expenses, including reasonable attorneys' fees incurred (whether such costs or fees are incurred before or after the commencement of the proceeding), including any and all appeals or petitions therefrom.

17. Controlling Law, Jurisdiction and Venue. This Contract shall be governed by the laws of the State of Utah. Venue shall be in Salt Lake County, Utah.

18. Authority. The individuals whose signatures appear below represent and warrant that they have full power and authority to enter into this Contract on behalf of the Parties for whom this Contract is executed, and no further act on behalf of any such Party shall be or is required to effectuate the terms hereof.

19. Effect of Contract. Nothing in this Contract shall be construed to relieve Grantor or City of any obligations imposed by federal, state or local laws, ordinances, regulations or standards.

20. Assignment. This Contract shall not be assigned by either Party.

21. Execution of Agreement. This Contract shall be valid only after it has been executed by Grantor and City's Mayor or designee, pursuant to authorization by the City Council, and approved as to legal form by the City Attorney.



IN WITNESS WHEREOF, the parties have executed this Agreement effective the date and year first above written.

IVORY HOMES, LTD., a Utah Limited Partnership

By: *[Signature]*  
Its: \_\_\_\_\_

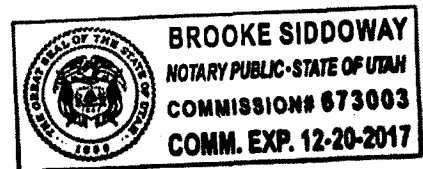
STATE OF UT )  
 ) : SS.  
COUNTY OF Salt Lake )

On this 26<sup>th</sup> day of March, 2015, personally appeared before me David K. Wehlgren, who being by me duly sworn did say that s/he is the CEO of IVORY HOMES, LTD., a Utah Limited Partnership, and that the foregoing instrument was duly authorized by the limited partnership at a lawful meeting held or by authority of its bylaws and signed in behalf of said limited partnership.

*Brooke Siddoway*  
NOTARY PUBLIC

My Commission Expires: 12-20-17

Residing in Salt Lake County



[SIGNATURES CONTINUED ON NEXT PAGE]

CITY OF WEST JORDAN, UTAH

By: \_\_\_\_\_  
Name: Kim V. Rolfe  
Title: Mayor

STATE OF UTAH                    )  
  : SS.  
COUNTY OF SALT LAKE    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared before me KIM V. ROLFE, who being by me duly sworn did say that he is the MAYOR of the CITY OF WEST JORDAN, UTAH, a municipal corporation and political subdivision of the State of Utah, and that the within and foregoing instrument was signed in behalf of said municipal corporation and that said corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**Exhibit "A"**  
**(the "Property")**

Beginning at the intersection of the Easterly right of way line of 5600 West Street and the Northwest corner of that certain tract of land conveyed to the Utah Department of Transportation (UDOT) in that certain Warranty Deed recorded July 11, 2012, under Entry Number 11428252, in Book 10035, at Page 455, in the office of the Salt Lake County Recorder, said point being 333.26 feet North 00°11'53" West and 22.00 feet North 89°48'07" East from the Southwest corner of Section 36, Township 2 South, Range 2 West of the Salt Lake Base and Meridian; thence North 00°11'53" West, along said Easterly right of way line, a distance of 1444.90 feet, more or less, to the Southerly line of Parcel 1 described in that certain Warranty Deed conveyed to West Jordan City on July 15, 2004, and recorded July 21, 2004, under Entry Number 9125475, in Book 9016, at Page 3193, in the office of the Salt Lake County Recorder; thence South 89°57' East, along the Southerly line of said West Jordan City property, a distance of 53.00 feet, more or less, to the Northwest corner of Wheatridge Estates Subdivision, Phase 4, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder; thence South 00°11'53" East 1330.488 feet along the Westerly line of said Wheatridge Estates Subdivision; thence, continuing along the Westerly line of said Wheatridge Estates Subdivision, Southeasterly along a 1543.437 foot radius curve to the left, a distance of 114.29 feet, more or less, to the Northeast corner of said UDOT tract; thence South 89°48'07" West, along the Northerly line of said UDOT tract, a distance of 57.23 feet, more or less, to the point of beginning.

The foregoing description contains 76,735 square feet, or 1.7616 acres, more or less.

**Exhibit "B"**

WHEN RECORDED, PLEASE RETURN TO:

West Jordan City Recorder  
8000 South Redwood Road  
West Jordan, Utah 84088

APN: 20-36-353-029

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**SPECIAL WARRANTY DEED**

**IVORY HOMES, LTD., a Utah Limited Partnership (hereinafter referred to as "Grantor")**, whose principal office address is 970 E Woodoak Lane, Murray, Utah 84117, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby convey and warrant against all who claim by, through or under the Grantor, to the **CITY OF WEST JORDAN, UTAH, a municipal corporation and political subdivision of the State of Utah (hereinafter referred to as "Grantee")**, whose principal office address is 8000 South Redwood Road, West Jordan, Utah 84088, the following parcels of real property located in Salt Lake County, State of Utah, more particularly described as follows, to wit:

Beginning at the intersection of the Easterly right of way line of 5600 West Street and the Northwest corner of that certain tract of land conveyed to the Utah Department of Transportation (UDOT) in that certain Warranty Deed recorded July 11, 2012, under Entry Number 11428252, in Book 10035, at Page 455, in the office of the Salt Lake County Recorder, said point being 333.26 feet North 00°11'53" West and 22.00 feet North 89°48'07" East from the Southwest corner of Section 36, Township 2 South, Range 2 West of the Salt Lake Base and Meridian; thence North 00°11'53" West, along said Easterly right of way line, a distance of 1444.90 feet, more or less, to the Southerly line of Parcel 1 described in that certain Warranty Deed conveyed to West Jordan City on July 15, 2004, and recorded July 21, 2004, under Entry Number 9125475, in Book 9016, at Page 3193, in the office of the Salt Lake County Recorder; thence South 89°57' East, along the Southerly line of said West Jordan City property, a distance of 53.00 feet, more or less, to the Northwest corner of Wheatridge Estates Subdivision, Phase 4, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder; thence South 00°11'53" East 1330.488 feet along the Westerly line of said Wheatridge Estates Subdivision; thence, continuing along the Westerly line of said Wheatridge Estates Subdivision, Southeasterly along a 1543.437 foot radius curve to the left, a distance of 114.29 feet, more or less, to the Northeast corner of said UDOT tract; thence South 89°48'07" West, along the Northerly line of said UDOT tract, a distance of 57.23 feet, more or less, to the point of beginning.

The foregoing description contains 76,735 square feet, or 1.7616 acres, more or less.

TO HAVE AND TO HOLD the described property, together with the tenements, hereditaments, and appurtenances belonging to the property to Grantee, Grantee's successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this instrument as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

IVORY HOMES, LTD., a Utah Limited Partnership

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared before me \_\_\_\_\_, who being by me duly sworn did say that s/he is the \_\_\_\_\_ of IVORY HOMES, LTD., a Utah Limited Partnership, and that the foregoing instrument was duly authorized by the limited partnership at a lawful meeting held or by authority of its bylaws and signed in behalf of said limited partnership.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Residing in \_\_\_\_\_, \_\_\_\_\_

**Exhibit "C"**

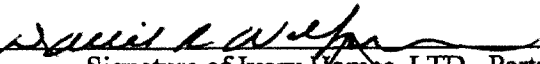
**Offer to Purchase**

Project No: N/A                      Parcel No(s): N/A  
Job/Proj /Auth No: N/A              Pin No. N/A                      Tax ID: 20-36-353-029  
Project Location: 8451 South 5600 West  
County of Property: Salt Lake  
Property Address: 8451 South 5600 West, West Jordan, Utah 84081  
Owner / Grantor(s): Ivory Homes, LTD.  
Owner's Address: 970 E Woodoak Lane, Murray, Utah 84117  
Primary Phone: N/A      Owner's Home Phone: N/A      Owner's Work Phone: (801) 747-7000

**The City of West Jordan hereby makes you an offer of \$245,552.00 for your property.**

The City of West Jordan declares that this offer is the amount that has been established as the fair market value of the Property by that certain real estate appraisal performed by **Bodell-Van Drimmelen Commercial Appraisers, Inc., dated February 25, 2002, and by that certain Reimbursement/Pioneering Agreement with the City of West Jordan, dated July 16, 2002,** and is in accordance with applicable state laws and requirements. This amount is based on the land, improvements and any fixtures considered real property.

The public use for which the property or property right is being acquired herein may include but is not limited to the following possible uses: the construction and improvement of a highway, which may include interchanges, entry and exit ramps, frontage roads, bridges, overpasses, signs and traffic control devices, placement of utilities, clear zones, maintenance facilities, detention or retention ponds, environmental mitigation, maintenance stations, material storage, bio fuel production, slope projections, drainage appurtenance, noise abatement, landscaping, and other related transportation uses.

Date: \_\_\_\_\_ By:   
Signature of Ivory Homes, LTD., Partner

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Signature of City of West Jordan, Agent

**Exhibit "D"**

**VOLUNTARY ACQUISITION  
Acknowledgement**

Project: 5600 West Corridor Preservation

Parcels: 20-36-353-029

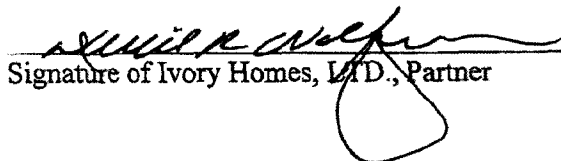
Name: Ivory Homes, LTD.

The City of West Jordan, Utah, is interested in voluntarily acquiring your vacant real property located at approximately 8451 South 5600 West, West Jordan, Utah 84081, for a future Road Construction Project, which may be eligible for future funding assistance from the Federal Highway Administration.

The City of West Jordan will **not** pursue acquisition by eminent domain in the event you are not interested in selling your property, or if we cannot reach a voluntary agreement for the purchase of your property.

The City of West Jordan is acquiring your property for transportation corridor preservation and your property is not a necessary part of a funded transportation project at this time. Therefore, under corridor preservation guidelines, the City of West Jordan may only acquire your property if you are willing to voluntarily sell it, and the City of West Jordan is prohibited from using eminent domain to acquire your property at this time (Utah Code Ann. Section 72-5-402(2)).

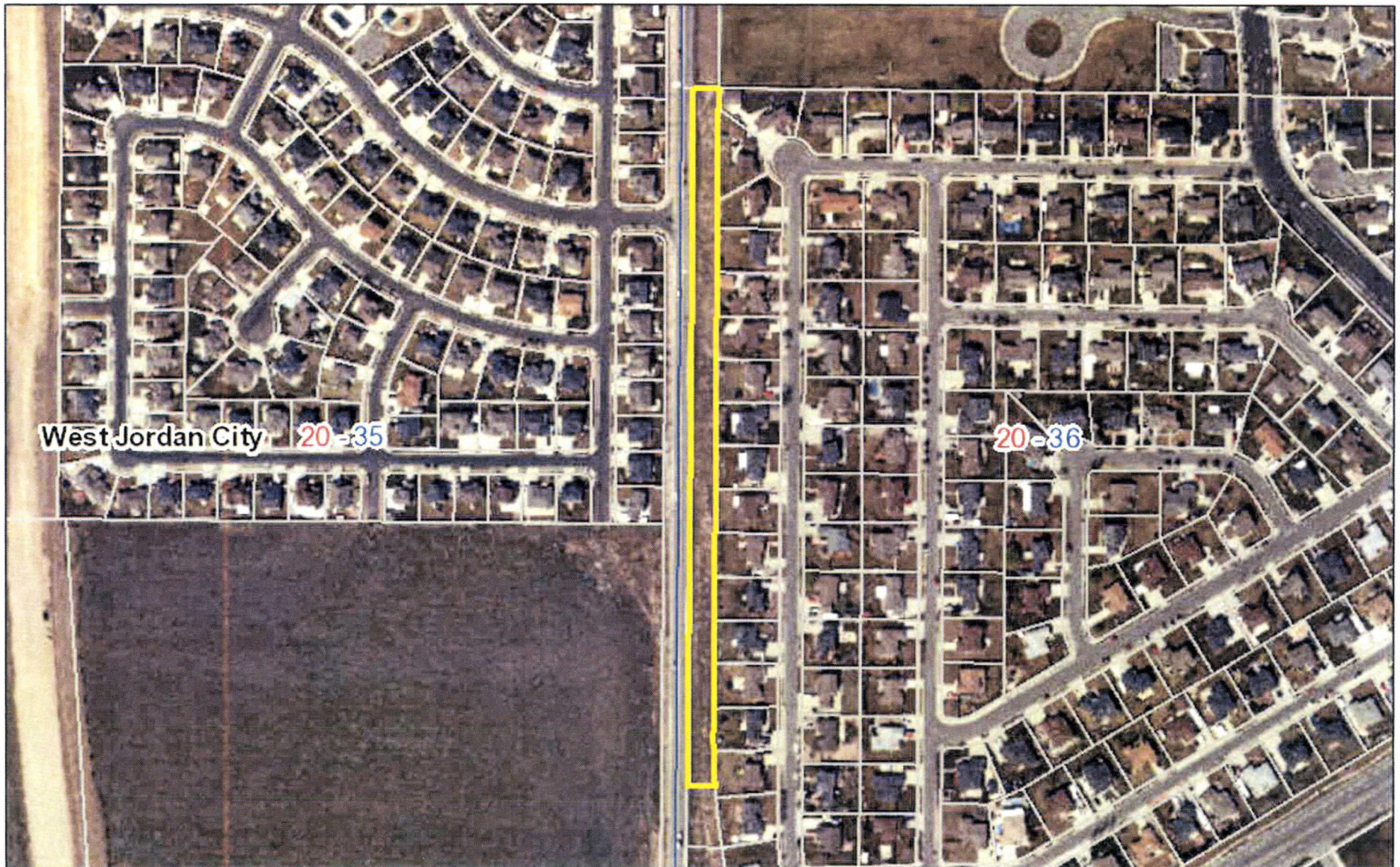
In accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), owner-occupants, who move as a result of a voluntary acquisition, are **not** eligible for relocation assistance. The property owners understand and acknowledge that if he/she/they waited for the funded project for this portion of the roadway, they would be eligible for relocation benefits pursuant to 49 CFR 24. However, by signing below the property owners understand and acknowledge that he/she/they are not entitled to any relocation benefits for the voluntary purchase of the property in advance of a funded project and freely choose to sell the property to the City of West Jordan before the project is funded.

  
\_\_\_\_\_  
Signature of Ivory Homes, LTD., Partner

\_\_\_\_\_  
Date



# Ivory Homes



March 11, 2015

